IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Chapter VIII, Rule 32(2) (b)

Description of case

Date of decision: 03.05.2006

Writ Petition No. 298 of 2002 (M/B)

State of Uttar Pradesh through
The Deputy Director of Agriculture
Soi Conservation, Dehradun. ……Petitioner.

Versus

1. Additional District Magistrate, Dehradun.
2. Smt. Leela Wati Negi
   W/o Sri C.S. Negi
   R/o 16/5, Mohini Road
   Dehradun. ……Respondents.

Mr. Subhash Upadhyaya, learned Standing Counsel for the petitioner-State.
None present for respondent No.2.

A.F.R. (Approved for Reporting)
Not approved for Reporting

Initials of Judge

Date: 03.05.2006

Note: Bench Reader will attach this at the top of first page of the judgment when it is put up before the Judge for signature.

Judgment Reserved

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

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(Old No. 5205/81)

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Mr. Subhash Upadhyaya, learned Standing Counsel for the petitioner-State.
None present for respondent No.2.

Coram: Hon'ble Rajeev Gupta, C.J.
Hon'ble Prafulla C. Pant, J.

Per: Hon'ble Prafulla C. Pant, J.

By means of this writ petition, moved under Article 226 of Constitution of India, the petitioner has sought writ in the nature of certiorari quashing the judgment and order dated 09.12.1980, passed by respondent No.1 on application (Annexure-1) moved by respondent No.2, for enhancement of rent under Section 21(8) of U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972.

2. Brief facts of the case are that respondents No. 2- Smt. Leela Wati Negi is owner/landlady of premises bearing municipal No. 14/2 Naya Gaon, Dehradun. The petitioner i.e. State through Deputy Director of Agriculture, Soil

Conservation, Dehradun, was tenant on monthly rent of Rs. 500/- per month in said building. (Now the petitioner has admittedly vacated the said premises and handed over the possession to respondent No. 2). While the petitioner was tenant of the premises in question, the landlady moved an application under Section 21(8) of aforesaid U.P. Act 13 of 1972, for enhancement of rent from Rs. 500/- per month to Rs. 2000/- per month. A copy of said application is Annexure -1 to the writ petition. The said application for enhancement of rent was contested by the petitioner before respondent No. 1 on the ground that the provisions of U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972, are not applicable to the premises in question as the building is a public building. The said preliminary objection of the petitioner was considered by the respondent No.2 and impugned order dated 09.12.1980, was passed holding that the application under Section 21(8) of aforesaid Act is maintainable for enhancement of rent of the building occupied by the State (petitioner). The petitioner has challenged said order on the ground that in view of definition of ‘building’ under Section 2(1) (a) and that of ‘public building’, defined under Section 3(o) of aforesaid Act, proviso of Section 21(8), is inapplicable to such buildings. (This writ petition was filed before Allahabad High Court and received by this Court by transfer under Section 35 of U.P. Reorganisation Act, 2000).

3. We heard leaned Standing Counsel for the petitioner and have examined the impugned order dated 09.12.1980, passed by respondent No.1, holding that application of the

landlady is maintainable under Section 21(8) of U.P. Act No. 13 of 1972.

4. Clause (a) of sub-section (1) of Section 2 of U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972, provides that nothing in the Act shall apply to any building of which Government or local authority or a public sector corporation or a Cantonment Board is the landlord. Section 3(o) of said Act, defines the word "public building" as under:-

"public building', means any building belonging to or taken on lease or requisitioned by or on behalf of the Central Government or a State Government (including the Government of any other State), and includes any building belonging to or taken on lease by or on behalf of any Local authority or any public sector corporation."

It is pertinent to mention here that Section 21 of he aforesaid Act contains provisions relating to the proceedings for release of building under occupation of tenant. But its sub-section (8) reads as under:-

"(8) Nothing in clause (a) sub-section (1) shall apply to a building let out to State Government or to a local authority or to a public sector corporation or to a recognized education institution unless the Prescribed Authority is satisfied that the landlord is a person to whom clause (ii) or clause (iv) of the Explanation to sub-section (1) is applicable.

Provided that in the case of such a building the District Magistrate may, on the application of the landlord, enhance the monthly rent payable thereof to a sum equivalent to one-twelfth of ten per cent of the market value of the building under tenancy, and the rent so enhanced shall be payable

from the commencement of the month of tenancy following the date of the application.

Provided further that a similar applicatoin for further enhancement may be made after the expiration of a period of five years from the date of the last order of enhancement."

5. From the perusal of aforesaid three provisions namely Section 2(1) (a), Section 3(o) and Section 21(8) of U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972, it appears as if the provisons of sub-Section (8) of Section 21, are contrary to the provisosns contained in Section 21 (1) (a) read with Section 3(o). However, this Court is of the view that what is required to be seen in the circumstances, is the intention of the legislature in keeping the proviso in sub-section (8) of Section 21 in the statute. Since a building let out to Government cannot be got released under Section 21(1) (a) of the Act, as such, the landlord has been given a right to get the rent enhanced if the necessary conditions are fulfilled under the said Section. Therefore, a harmonious construction of aforesaid provisions is required to be made. A true spirit contained in the Act after reading the aforesaid all the three provisions together, makes this Court to opine that sub-section (8) of Section 21, being specific has an overriding effect over the general definitions and provisions contained in Section 2(1) (a) and Section 3(o) of the Act. That being so, where other provisions of the Act are inapplicable to public buildings, in view of the definition of 'building' and 'public building' to the accommodation owned or let out to the Government Department, provisions quoted above contained in sub-section (8), are applicable to such building.

6. The above view gets support from the view taken by Allahabad High Court in para 39 and 40 of the judgment delivered in ***Punjab National Bank Vs. Sugan Chandra 1985(1) Allahabad Rent Cases Pg. 215 (Full Bench).*** Same view was registered by the Lucknow Bench of Allahabad High Court in ***Hussaini Begum Vs. State of U.P. 1985 (1) Allahabad Rent Cases, Pg. 492.*** Otherwise also Section 2(1) (a) of the Act relates to a building of which Government, cantonment Board or public corporate body etc is the landlord, while Section 21(8) of the Act applies to the building in which such authority is the tenant and not landlord.

7. In view of the above discussion, we have no hesitation in holding that the application moved by respondent No.2 before respondent No. 1, for enhancement of rent was maintainable. Accordingly, the writ petition is liable to be dismissed. The same is dismissed.

(Prafulla C. Pant, J.) **(Rajeev Gupta, C.J.)**

Dt:03.05.2006
Sweta